



U.S. Supreme Court Permits Fiduciary Breach Claims for Participant Account Losses

On February 20, 2008, a unanimous Supreme Court ruled in [LaRue v. DeWolff, Boberg & Associates, Inc.](#) that a participant in a defined contribution plan can sue for fiduciary breaches under ERISA Section 502(a)(2) to recover investment losses to an individual's plan account.

Background

James LaRue sued his former employer and its 401(k) plan to recover losses to his individual account, which he claimed were caused by the plan administrator's failure to follow his investment instructions. LaRue sought relief under ERISA Section 502(a)(3), which allows participants to bring actions for "other appropriate equitable relief." The federal district court dismissed the case because it found that LaRue sought monetary damages rather than equitable relief.

On appeal to the U.S. Court of Appeals for the Fourth Circuit, LaRue maintained his claim under Section 502(a)(3), and introduced a new claim for losses to his plan account under Section 502(a)(2), which allows a plan participant to seek appropriate relief under ERISA Section 409. Section 409 imposes personal liability on plan fiduciaries for plan losses resulting from breaches of their fiduciary duties.

Relying on the Supreme Court ruling in [Massachusetts Mutual Life Insurance Company v. Russell](#), the Fourth Circuit rejected LaRue's arguments and held that recovery under Section 502(a)(2) must benefit the plan in its entirety and not just an individual participant or beneficiary, and confirmed that compensatory or money damages are not authorized by Section 502(a)(3). The U.S. Supreme Court agreed to review the case.

LaRue Decision

The Supreme Court unanimously affirmed the right of defined contribution retirement plan participants and beneficiaries to sue plan fiduciaries under Section 502(a)(2) to recover losses to their individual accounts due to a fiduciary's breach, although they did so in three separate opinions. In reversing the Fourth Circuit, the majority distinguished its decision in *Russell* by focusing on the types of plans (defined benefit versus defined contribution) at issue in each case. The Court clarified that the "entire plan" language in *Russell* only applies to defined benefit plans, reasoning that misconduct by defined benefit plan administrators will not affect an individual's benefit

entitlement “unless it creates or enhances the risk of default by the entire plan.” With respect to defined contribution plans, the Court stated that fiduciary misconduct does not need to threaten the solvency of the entire plan to reduce the benefit below what the participant would otherwise have received, but only need impact the individual’s account.

BUCK COMMENT. *Thus, the Russell decision still stands for defined benefit and other ERISA plans, allowing only recoveries to the entire plan for losses to plan assets and not consequential damages, such as compensatory or punitive relief.*

Unresolved Issues

Significantly, because the Court found that LaRue had a right to sue under ERISA Section 502(a)(2), it declined to rule whether the type of relief requested is “other appropriate equitable relief” under ERISA Section 502(a)(3). It left the determination of whether the type of damages sought by LaRue is an appropriate form of equitable relief to lower courts.

Further, although Chief Justice Roberts concurred with the result, he raised the possibility that LaRue’s claim should instead have been brought as a claim for benefits under Section 502(a)(1)(B), which permits a plan participant or beneficiary to recover benefits due under the plan’s terms, to enforce rights under the plan’s terms, or to clarify rights to future benefits under the plan’s terms. He noted, however, that if LaRue has a claim for benefits under Section 502(a)(1)(B), it is unclear whether he could also bring a claim for fiduciary breach under 502(a)(2). This is an issue for lower courts to decide.

BUCK COMMENT. *In a Section 502(a)(1)(B) claim for benefits, a claimant is required to exhaust the plan’s administrative remedies and, where the plan administrator has discretion to decide claims, courts give the plan administrator’s determination substantial deference. Justice Roberts cautions that recharacterizing a claim for benefits under 502(a)(1)(B) as a breach of fiduciary duty claim could remove the safeguards that have encouraged employers to voluntarily establish employee benefit plans. Without these safeguards, litigation could increase and significantly impact plan administration costs.*

Impact and Next Steps to Consider

The *LaRue* decision is significant because it opens the door for participant lawsuits when they suffer losses in their individual account plans. Whether *LaRue* is ultimately successful is still to be determined.

In light of this decision, plan sponsors should take action to review their fiduciary and administrative practices and make appropriate changes to minimize their exposure to lawsuits and potential liability. Of particular importance is reviewing the plan’s Section 404(c) practices, including timely implementation of investment directions, reviewing plan administrative practices to ensure that the plan is administered in accordance with its terms

regarding participant investments, and reviewing contracts with third-party administrators and vendors to determine liability in cases where they may not have implemented a participant's investment direction.

Conclusion

The *LaRue* case has now been sent back to the trial court to determine whether a fiduciary breach actually occurred and what, if any, damages are appropriate. However, the Supreme Court's decision to allow an action by a participant for individual account losses to move forward has significant implications for plan sponsors of 401(k) and other defined contribution plans.

Buck's consultants would be pleased to assist you in reviewing your 401(k) plan provisions to minimize exposure to fiduciary breach claims.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.